

Clandette

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

JUL 22 2002

OFFICE OF
MANAGING DIRECTOR

Mary E. Davis
Assistant Secretary Treasurer
Pennsylvania Telephone Company
191 Middle Road
Jersey Shore, Pennsylvania 17740

Re: Pennsylvania Telephone Company
Bill No. 2002-9-9218

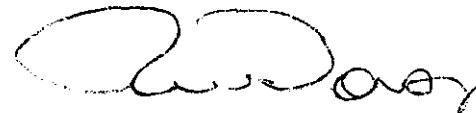
Dear Ms. Davis:

This is in response to your request dated April 26, 2002, filed on behalf of Pennsylvania Telephone Company (PTC) for a waiver of the late charge penalty for late payment of the fiscal year (FY) 2001 regulatory fee. Our records reflect that you have not paid the \$19.75 late charge penalty.

In your request, you state that Verdi V. Davis (who was your husband and the (retired) Central Office Supervisor of PTC) was diagnosed with brain cancer on August 27, 2001, died on September 18, 2001, and was buried on September 22, 2001. You state that as a result of these events, "[w]e did not realize we had missed the [September 26, 2001 due date for the regulatory fee] payment." The Communications Act of 1934, as amended, requires the Commission to assess a late charge penalty of 25 percent on any regulatory fee not paid in a timely manner. It is the obligation of the licensees responsible for regulatory fee payments to ensure that the Commission receives the fee payment no later than the final date on which regulatory fees are due for the year. Your request does not indicate or substantiate that PTC met this obligation. Therefore, your request for waiver of the late charge penalty for late payment of the FY 2001 regulatory fee is denied.

Payment of PRC's \$19.75 late charge penalty for FY 2001 is now due. The late charge penalty should be submitted, together with a copy of Bill No. 2002-9-9218, within 30 days of the day of this letter. If you have any questions concerning this matter, please contact the Revenue & Receivables Operation Group at (202) 418-1995.

Sincerely,



Mark A. Reger
Chief Financial Officer

Enclosure



Pennsylvania Telephone Company

191 Middle Road • Jersey Shore, PA 17740 • (570) 745-7101 FAX (570) 745-3666

RECEIVED
FCC

2002 MAY -7 P 2:58

ACCOUNT PROCESSING
CREDIT/DEBIT/TMT

April 26, 2002

Ms. Claudette Pride, Acting Chief
Revenue and Receivables Operations Group
Federal Communications Commission
Washington, DC 20554

Dear Ms. Pride

We are in receipt of a letter from your office dated April 24, 2002, concerning a late payment of \$79.00 for 2001 annual regulatory fees. I have enclosed copies.

This letter is to give just cause as to why the penalty is inapplicable. I have enclosed a copy of an obituary for Verdi V. Davis, he was the Central Office Supervisor as well as the husband to the Assistant Secretary Treasurer, as well as my, Kimberly Hannan's, father. He was diagnosed with brain cancer on August 27, 2001, and passed away on Tuesday, September 18, 2001. He was buried on Saturday, September 22, 2001. We returned to work on the following Monday, September 24, 2001.

Everything at this office was done to the best of our ability. I discussed this lateness with I believe his name was Louis Minella, out of the Pittsburgh FCC office. I explained the entire situation and he was aware—he called me on September 26, 2001 and I immediately "cut the check." We did not realize we had missed the payment. During this three-week period we provided his care at home with Hospice involvement. It was a 24 hour-a-day constant care schedule. We worked like crazy to keep the office going and to provide the care and support that was needed during this extremely intense time in our family's life.

If you still believe that the penalty is justified, please let this office know and a payment of \$19.75 will be forwarded along with the Bill for Collection that came with the letter from your office.

Sincerely

Mary E Davis

Mary E. Davis
Assistant Secretary Treasurer

Enclosures

ACCOUNT PROCESSING
CREDIT/DEBIT/TMT

2002 JUN 26 A 10:45

RECEIVED
FCC

Tom

Federal Communications Commission
BILL FOR COLLECTION

FOR INQUIRIES CALL
1-202-418-1995
(Credit and Debt Management Group)

Bill Number				Current Bill Date																					
2002-9-9218				APR 24 2002																					
PAYER FRN#		APPLICANT FRN#																							
<p>PENNSYLVANIA TELEPHONE CO. 191 MAIN ROAD JERSEY SHORE, PA 17740-9519</p>																									
<p>Payable to: Federal Communications Commission Send a copy of this bill to: Federal Communications Commission REVENUE & RECEIVABLE OPER. P.O. BOX 358635 PITTSBURGH, PA 15251-5325</p>																									
Total Amount Due				Due Date																					
\$19.75				Total Amount Due Must Be Received By MAY 24 2002																					
<p>SPECIAL INSTRUCTIONS (OPTIONAL): FCC REGISTRATION NUMBER (FRN) REQUIRED</p> <p>Payment of Regulatory Fees was due to the Federal Communications Commission (FCC) by midnight, September 26, 2001. Your payment was received October 05, 2001. A 25% late penalty has been assessed.</p> <p>Please write your bill number on your remittance. Please attach a copy of this bill to your payment to ensure proper credit.</p>																									
Payment Type Code				Quantity	Fee Due																				
0	1	9	9	1	\$19.75																				
Total Due					\$19.75																				
Payment Method: Check <input type="checkbox"/> (Attach) Credit card <input type="checkbox"/> (Complete Below)																									
<input type="checkbox"/> MasterCard																									
<input type="checkbox"/> VISA																									
Account No.: <table border="1"><tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr></table>																									
Expiration: <table border="1"><tr><td></td><td></td><td></td><td></td></tr></table> Month Year																									
I hereby authorize the FCC to charge my MasterCard or VISA for the service(s) / authorization(s) herein described.																									
AUTHORIZED SIGNATURE			DATE																						

Verdi V. Davis

Mr. Verdi V. (Vic) Davis, 73, of 223 Middle Road, Jersey Shore, died Tuesday, September 18, 2001 at his home. Born June 19, 1928 in Williamsport, he was the son of Guy Davis and the former Stella Wise.

Several years ago, he was the owner of Davis and Legget Garage in Canton. He later retired as the manager of the Penna Telephone Company's Central Penna. Office in Oval. For many years he was a member of the Loyal Order of Moose Lodge 479 of Canton. He was a member of the VFW of Canton and the Jersey Shore Elks Lodge 1057. During WWII and the Korean War, he served in the United States Army.

Surviving are his wife, the former Mary E. Belawske; they were united in marriage November 19, 1955. Also surviving are two daughters, Mrs. Kimberly M. Hannon of Williamsport and Mrs. Mary Ann Gorman of Bath, four grandchildren and one sister, Mrs. M. Lewis of South Williamsport.

Funeral services will be Saturday, September 22, 2001 at 10 a.m. in the Frederick B. Walker Funeral Home, 125 N. Main St., Jersey Shore. Rev. Theodore Cockley will officiate. Friends may call 7 p.m. Friday in the funeral home. Burial will be in the Wildwood Cemetery.

Memorials can be made to Susquehanna Home Hospice, 1100 Grampian Blvd., Williamsport, PA, 17701-1995 or to the Muncie Community Assn., c/o Union National Bank, 100 Union St., Taylor, PA 18517.

Federal Communications Commission
Washington, D.C.

APR 24 2002

Office Of
Managing Director

Pennsylvania Telephone Co.
191 Main Road
Jersey Shore, PA 17740-9519

*See letterhead
for address -*

*check written &
mailed 9/26/01*

RE: 2001 REGULATORY FEES
Bill # 2002-9-9218

Dear Licensee:

This letter is notice that you were late paying your 2001 annual regulatory fee (s). Payment of regulatory fees was due to the Federal Communications Commission (FCC) by midnight, September 26, 2001. Your fee payment of \$ 79.00 was received on October 05, 2001.

In accordance with Section 9 [47 USC 159(c)(1)], a 25 percent late penalty in the amount of \$ 19.75 has been assessed. Unless you can show just cause why the penalty is inapplicable, payment is due within 20 days from the date of this letter.

Payment should be sent to the Federal Communications Commission, Regulatory Fees, P.O. Box 358835, Pittsburgh, PA 15251-5835, along with a copy of the enclosed billing invoice.

If you have any documentation that will establish that the fee was remitted and received at Mellon Bank by September 26, 2001, such as a carrier dated receipt, please include this documentation with your response so that we can clear your record (s).

You are cautioned that failure to respond and/or pay the penalty will subject you to further sanctions as defined in 47 CFR, Section 1.1164 of our Rules. These sanctions include subjecting the delinquent payer's pending applications to dismissal, and may require a delinquent payer to show cause why any existing instruments of authorization should not be revoked. Further sanctions include interest charges, and the full cost of collection to the Federal government pursuant to Section 3720A of the Internal Revenue Code, 31 USC 3717, and the provision of the Debt Collection Act, 31 USC 3717.

If you have any questions, you may contact my office at (202) 418-1995.

Sincerely,



Claudette Pride, Acting Chief
Revenue and Receivables Operations Group

Enclosure

Payment Transactions Detail Report

Date: 06/26/2002

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name	Fcc Account Number	Payer TIN	Received Date							
0110098835130002	PENNSYLVANIA TELEPHONE CO 191 MIDDLE ROAD	WP00044714	0000000000	10/05/2001 00:00:00							
					JERSEY SHORE PA 17740						
Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check	Detail Amount	Trans Code	Payment Type
\$79.00	\$79.00	1	0172	59978	809859	PENNSYLVANIA TELEPHONE CO	177409519		\$79.00	1	PMT
Total									1		
									\$79.00		

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)

Vernal Enterprises, Inc.)

Fee Payment for Application for FM Channel)

277 B1 Facilities in Brookville, Pennsylvania)

Fee Control No. 9605218195242001

MEMORANDUM OPINION AND ORDER

Adopted: June 27, 2002

Released: July 23, 2002

By the Commission: Commissioner Copps dissenting and issuing a statement.

I. INTRODUCTION

1. The Commission has before it an Application for Review filed by Vernal Enterprises, Inc. Vernal seeks review of a decision of the Office of Managing Director denying Vernal's request for a refund of the \$2,335.00 filing fee it paid in connection with its application for new FM Channel 277 B1 facilities in Brookville, Pennsylvania.¹ For the reasons below, we deny the Application for Review.

II. BACKGROUND AND DISCUSSION

2. On May 20, 1996, Vernal filed an application for an FM radio station construction permit for FM facilities in Brookville, Pennsylvania. Vernal's application was mutually exclusive with other applications. Vernal filed its application prior to the enactment of the Balanced Budget Act of 1997, which amended section 309(j) of the Communications Act (Act), 47 U.S.C. §309(j), to require competitive bidding, rather than comparative hearings, to award licenses to mutually exclusive applicants for commercial broadcast licenses. The Balanced Budget Act, however, also amended the Act to add a new section 309(l), 47 U.S.C. §309(l), that authorized the Commission, in its discretion, to use competitive bidding or comparative hearings to award licenses to pending mutually exclusive broadcast applicants if the competing applications had been filed prior to July 1, 1997. In addition, section 309(l) provided for a 180-day period during which such pre-July 1 broadcast applicants could enter into settlement agreements that would resolve mutual exclusivity and be entitled to mandatory waivers of FCC rules limiting the amount of settlement payments between the applicants. Vernal and its mutually exclusive applicants took advantage of these provisions and, in January 30, 1998, filed a settlement agreement with the Commission. The agreement was subsequently approved and

¹ Letter from Mark Reger, Chief Financial Officer, Office of Managing Director, FCC to Larry Schrecongost, President, Vernal Enterprises, Inc. (dated Jan. 14, 2002) (*January 14 Letter Decision*).

resulted in the dismissal of Vernal's application on April 16, 1998, and award of the license to the remaining applicant.²

3. Subsequent to the filing (and approval) of the settlement agreement, the Commission completed a rulemaking proceeding in August, 1998, in which it determined that any remaining pre-July 1, 1997 broadcast applications should be awarded by competitive bidding.³ The Commission stated, however, that "pending applicants in all comparative licensing cases subject to resolution by competitive bidding pursuant to Section 309(l) may file a pleading disavowing intent to participate in the auction and seek dismissal of their applications."⁴ The Commission further stated that, "[o]nce dismissal of any such application is final, we will entertain requests for refunds of any hearing and filing fees actually paid by such applicants."⁵

4. Vernal claims that it is entitled to a refund of the filing fee under the *First Report and Order* because the Commission dismissed Vernal's mutually exclusive application for the new FM facilities after granting on April 16, 1998 the settlement agreement filed by Vernal and its mutually exclusive applicants on January 30, 1998. Vernal contends that a grant of its refund request would be consistent with the Office of Managing Director's grant of refund requests from similarly-situated applicants whose mutually exclusive applications had been dismissed following the Commission's approval of settlement agreements.

5. In *Applications of Wade Communications, Inc., Ellen R. Evans d/b/a Heartland Communications, and B.R. Clayton and Martha S. Clayton d/b/a Middleton Radio, Memorandum Opinion and Order*, 6 FCC Rcd 20,708 (2001) (*Wade MO&O*), the Commission held that the *First Report and Order* "clearly state[s] our intention that refunds of filing fees would only apply to the remaining pre-July 1, 1997 applicants for licenses or permits who had not resolved mutual exclusivity through negotiated agreements during the 180-day period [see *supra* para. 2] and whose pending mutually exclusive applications would therefore be resolved pursuant to our decision to use competitive bidding."⁶ The permit for which Vernal applied, in contrast, was not awarded by auction but pursuant to the settlement agreement which Vernal and its mutually exclusive applicants entered into during the 180-day period and prior to the Commission's decision in the *First Report and Order* (and which the Commission approved prior to its decision in the *First Report and Order*).

6. Vernal is correct that several fee refund decisions by the Office of Managing Director are inconsistent with the *First Report and Order* and the Commission's subsequent decision in the *Wade MO&O*. At the same time, we note that there are several decisions by the Office of Managing Director contemporaneous with those cited by Vernal in which the Office of

² See *Notice of Action on FM Broadcast Settlement Agreements and Applications*, Report No. 44221A (released Apr. 16, 1998) (*April 16 Notice of Action*).

³ See *Implementation of Section 309(j) of the Communications Act - Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, First Report and Order*, 13 FCC Rcd 15920, 15931-32 (1998) (*First Report and Order*).

⁴ *Id.* at 15957.

⁵ *Id.*

⁶ *Wade MO&O*, at para. 7 (citing *First Report and Order*, 13 FCC Rcd 15920, 15957); see also *id.* at para. 8 ("nothing in the *First Report and Order* indicated that refunds of filing fees would be granted to applicants that had already settled and resolved mutual exclusivity during the 180-day period").

Managing Director denied application fee refund requests from applicants similarly-situated to those cited by Vernal.⁷ The Commission's *Wade MO&O* resolved the conflict among these differing rulings, making clear that refunds of application fees are limited to those situations in which the sought-after permit was awarded by auction. As noted above, the permit involved in Vernal's situation was not awarded by auction, and therefore the earlier decisions cited by Vernal are entitled to no weight here. After careful review of the issues raised in the Application for Review, we therefore find no basis for modifying the decision of the Office of Managing Director denying Vernal's request for a refund of its application filing fee.

III. ORDERING CLAUSE

7. ACCORDINGLY, IT IS ORDERED that the Application for Review filed on February 13, 2002 by Vernal Enterprises, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

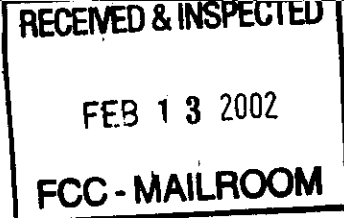
Secretary

⁷ See Letters from Mark Reger, Chief Financial Officer, Office of Managing Director, FCC, to Timothy K. Brady, Esq. (all three letters dated Nov. 18, 1999) (denying application fee refund requests of Ellen R. Evans (d.b.a. Heartland Communications), B.R. and Martha S. Clayton (d.b.a. Middleton Radio), and Wade Communications, Inc.). The applicants' appeal of these November 18, 1999 decisions was denied by the Commission in *Wade MO&O*.

DISSENTING STATEMENT OF COMMISSIONER MICHAEL J. COPPS

*In the Matter of Vernal Enterprises, Inc. Fee Payment for Application for FM Channel 277 B1
Facilities in Brookville, Pennsylvania*

Given the balance of equities here, I would grant Vernal's request for a refund. The majority's decision seems to me to be based upon a convoluted interpretation of a decision issued by the Commission *after* the settlement at issue. Given the after-the-fact nature of this decision, and the acknowledged inconsistencies regarding refunds already granted by the Commission, I dissent from the Order denying the request for a refund.



ORIGINAL

Before The
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:

Vernal Enterprises, Inc.
P.O. Box 1032
Indiana, PA 15701

Request for Fee Refund

)
)
) File No. BPH-960520MD
)
) Fee Control No. 9605218195242001
)
)

To: The Commission

APPLICATION FOR REVIEW

1). Vernal Enterprises, Inc. (Vernal), by its President, Larry L. Schrecongost, hereby files this Application for Review of actions taken pursuant to delegated authority by letter of the Office of Managing Director (OMD), dated January 14, 2002 (copy attached as Exhibit #1), denying Vernal's request for Refund of Filing Fee, dated April 17, 2000 and reiterated on October 28, 2001. In support of this Application for Review, Vernal submits:

I. Background

2). Vernal is a former applicant (File No. BPH- 960529MD) for a new FM station to operate on Channel 277 B1 at Brookville, Pennsylvania. Vernal posted a filing fee of \$2335.00 in connection with its application.

3). Subsequently, Vernal participated in a Joint Petition for Approval of Settlement Agreement ("Joint Agreement") filed on January 30, 1998 pursuant to the Balanced Budget Act of 1997, P. L. 33, 111 Stat. 251 (1997) ("Balanced Budget Act") thereby requesting dismissal of its Brookville application. Accordingly, Vernal's application was dismissed by Final Order of the Commission (Report No. 44221A, released April 16, 1998).

4). By original letter dated April 17, 2000, and together with its continuation request dated October 28, 2001 (copies attached as Exhibits 2 and 3), Vernal sought full refund of its \$2335.00 filing fee paid at the time of the filing of its Brookville application. Vernal did so pursuant to the Commission's *First Report and Order* (FCC98-194) in MM Docket No. 97-234 (Released August 18, 1998). In the *First Report and Order*, the Commission indicated (at paragraphs 101-103) that it would refund the filing fees paid by applicants who: (a) were subject to the provisions of 47 USC 309(l) and (b) do not participate in an auction and who elected not to continue prosecuting their applications through the competitive bidding process.

5). In its letter application, Vernal represented that it was eligible for a full refund of its filing fees. Nonetheless, by its letter dated January 14, 2002, the OMD denied Vernal's refund request. In so doing, the OMD took the position that the *First Report and Order* does not contemplate fee refunds in circumstances "...where a permit is awarded as a result of a settlement agreement among competing applicants" (Exhibit #1, p 2).

6). With respect to Vernal's claim that it was identically situated and likewise deserving to that of Robert M. Stevens (Stevens), another dismissed applicant in the Joint Agreement **who had successfully petitioned for the refund of his filing fees in the**

very same Brookville, PA proceeding with the very same claim, the OMD, in almost a footnote, concludes ...*"it appears that decision was in error"* (Exhibit #1, p 2).

II. QUESTIONS PRESENTED

7). a) Whether the OMD abused its discretion as a matter of law in denying Vernal's refund application. b) Whether the OMD misrepresented to Vernal the circumstances allowing for fee refunds, and, if so, how this may have adversely impacted on Vernal. c) Whether the Stevens refund request was granted merely as a result of innocent "error," as the OMD would have it, in denying Vernal's grant, or, rather, granted as a result of the implementation of the OMD's considerable reasoning of the provisions of the *First Report and Order*. And, d) whether additional attempt at controversy, as implied by OMD's language in its Denial, as to whether Vernal's fee refund request was timely filed is applicable or even relevant in the instant matter.

III. Argument

8). With respect to alleged timeliness, in its letter to Vernal, the OMD states:

Despite the fact that your request was filed two years after the settlement agreement was approved, you contend that a grant of Vernal's request for a refund of its application filing fee would be consistent with the Commission's grant of Stevens's refund request in the July 15 Letter Decision" (Exhibit #1, p 1).

Here, without connecting its arrows to any consequence, the OMD is grasping to find

some imagined fault with Vernal. This kind of issue obfuscation is unbecoming to the Commission.

9). Contrary to the OMD's timeliness rebuke, Vernal acted promptly in presenting its refund request. Vernal knows of no toll governing the timing of the filing of its dismissed application refund request. In fact, Vernal promptly submitted its fee refund request promptly after the OMD released its February 14, 2000 Public Notice (DA-00-275) (copy attached as Exhibit #4) identifying the decision of grant in the Stevens Brookville fee refund application. Vernal relied upon the policy determinations the OMD had set forth in the February 14, 2000 Public Notice and filed its refund application by letter dated April 17, 2000. Thus, the timing of Vernal's request should not be tainted in any respect by the OMD's uncharacteristic innuendo.

10). The OMD's representation that "error" belies the Stevens grant is not compelling and is inconsistent with the established factual record of the OMD. The problem for the OMD in defending its denial to Vernal is that the Grant decision in Stevens is not isolated. The OMD has created an extensive paper trail of granting such applications well beyond Stevens. So developed is the OMD's policy, is that there is even a first Stevens Grant and a second Stevens Grant.

11). The OMD has crafted a policy with respect to refunding application fees, that, quite apart from "error," has been applied uniformly to numerous other identically situated applicants. Following the release of the *First Report and Order* on August 18, 1998, and remarkably opposite to Vernal's ruling, a review of the OMD's own database shows, that, **in decision after decision**, the OMD granted the filing fee refunds of identically situated applicants over a lengthy period of time.

12.) After the August 18, 1998 release of the *First Report and Order*, the OMD was presented with at least five separately filed requests for fee refunds. On October 14, 1998, BK Radio filed its request for fee refund in connection with its dismissed application for a new FM construction permit at Wake Village, TX (File No. BPH-970701ME filed July 1, 1997) (copy attached as Exhibit #5), and Alan R. Quarnstrom filed his request for fee refund in connection with his dismissed application for a new FM construction permit at Siren, WI (File No. BPH-970325MD filed March 25, 1997) (copy attached as Exhibit #6). On October 19, 1998, Robert M. Stevens filed his request for a refund in connection with his dismissed application for a new FM construction permit at Brookville, PA (File No. BPH-960520MC filed May 20, 1996) (copy attached as Exhibit #7) and separately filed his request for a refund in connection with his dismissed application for a new FM construction permit at Barnesboro, PA (File No. BPH-960517MA filed May 17, 1997) (copy attached as Exhibit #8). On November 17, 1998, BK Radio filed its request for fee refund in connection with its dismissed application for a new FM construction permit at Winona, TX (File No. BPH-960222MC filed February 22, 1996) (copy attached as Exhibit #9).

13). Each of these applicants certified in their applications for fee refunds that: they filed application fees in connection with their construction permit application; they each participated in a joint Request for Approval of Settlement with the Commission; and, they each requested dismissal of their respective application. (Each of these five applicants was represented by the firm Shainis & Peltzman and contained essentially identical affirmations and representations.) Each of these applicants (with the exception of BK Radio's Winona, TX application) was a pre-July 1, 1997 broadcast applicant.

14). Not being rushed into judgment, and after taking its good old deliberation time, the OMD acted favorably on each of these requests. Citing relevant sections of 47 C.F.R. and the *First Report and Order*, the OMD announced its affirmative judgment on the issue of awarding fee refunds in circumstances where a permit is awarded as a result of settlement agreements among competing applicants. The OMD awarded refund grants to the five above-named respective applicants: BK Radio-Wake Village, TX, granted September 16, 1999 (copy attached as Exhibit #10), public notice given February 14, 2000 (copy attached as Exhibit #4); Alan R. Quarnstrom-Siren, WI, granted February 9, 1999 (copy attached as Exhibit #11), public notice given July 7, 1999 (copy attached as Exhibit # 12); Robert M. Stevens-Brookville, PA, (*this is the same dismissed proceeding as Vernal's hereby contested OMD denial*) granted July 15, 1999 (copy attached as Exhibit #13), public notice given February 14, 2000 (copy attached as Exhibit #4); Robert M. Stevens-Barnesboro, PA, granted July 21, 1999 (copy attached as Exhibit #14), public notice given February 14, 2000 (copy attached as Exhibit #4); and, BK Radio-Winona, TX, granted February 9, 1999 (copy attached as Exhibit #15), public notice given July 7, 1999 (copy attached as Exhibit #12).

15). In each of these Decisions (see Exhibit #'s 10, 11, 13, 14 and 15) the OMD language is the same:

You represent that (applicant) "paid his application fee in anticipation that his application would be reviewed and . . . if found to be mutually exclusive, would be designated for hearing." You further represent that at the time he filed his application he did not know that the (community) channel would be awarded through competitive bidding procedures, and that when he became aware that the Commission adopted such procedures, he decided to dismiss his application pursuant to an universal settlement.

Under the circumstances, because (applicant) timely disavowed any interest in

participating in the auction and sought dismissal of his application, and further because his dismissal has been rendered final, refund of the filing fee is appropriate. *See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*. 13 FCC Rcd 15920, 15957 (1998); *see also* 47 C.F.R. 1.1113(a)(4).

Accordingly, your request is granted. A check, made payable to the maker of the original check and drawn in the amount of (amount), will be sent to you at the earliest practicable time.

16). From the facts outlined above, it becomes clear that the OMD is lacking in candor and has misrepresented to Vernal the well-established factual circumstances in granting fee refund requests. In discharging the *First Report and Order*, the OMD set out to effect the policy considerations set forth therein. The OMD eloquently supported the five named petitioner's interpretations with its grant language. The OMD lacked any ambiguity and was decisive in its Decision determinations. Such was the OMD's implementation of the *First Report and Order* from the date of the first grant to the five above named fee refund applicants -- February 9, 1999, that of BK Radio-Winona, TX application (granted nearly four months after its filing) through February 14, 2000, the date of the last of the public notices of its Decisions. Thus, contrary to OMD's representation of "error," and for at least a year, until Vernal came to town with its April 17, 2000 request, the OMD was happy to favorably accommodate a wave of claimants, with identical status to Vernal, with a full refund of their filing fees from their dismissed applications.

17). The OMD cannot develop such a well-established policy pattern and then arbitrarily disavow it with respect to its handling of Vernal. It is important to note that the OMD identifies its various Public Notices as "FEE DECISIONS OF THE

MANAGING DIRECTOR” (underscore added) (see Exhibit #'s 4 and 12) for the public's reliance. The OMD can't be permitted to waffle on a Decision. It either is a Decision, or isn't, and Decisions must be applied evenly and consistently.

18). The OMD does not have discretion to act arbitrarily and discriminately in acting on refund requests, as it has with Vernal, and must be made to apply its decisions even-handedly. The law the OMD cites in its grant language to the five favored applicants at Para 14, supra, were all in effect when Vernal made its good faith refund application on April 17, 2000. Had the OMD not engaged in misrepresentation, and had it been consistent in applying the same Decision standard to Vernal as it had with the other applicants cited herein, then Vernal's request would have been granted.

19). The January 14, 2002 denial action of the OMD is blatantly unfair to Vernal. The OMD wholesale granted the very relief to which Vernal was denied to identically situated fee refund applicants. Each of the five referenced refund grants in general, and the Stevens-Brookville, PA grant in particular, all which were made to original construction permit applicants who filed prior to the *First Report and Order*, and all granted following its release, is apposite to Vernal's situation.

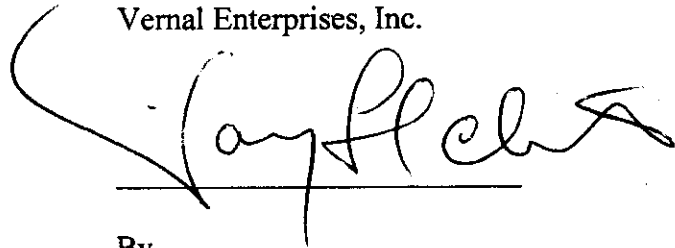
20). In its *First Report and Order*, at Para. 103, the Commission stated it was taking “the extraordinary step” in even entertaining refund requests as a matter of “fairness.” Vernal submits to this Commission that fairness is never extraordinary. However, the OMD's Denial action taken with Vernal *is an extraordinary step* since it is fundamentally unfair. Couple this with the fact that the OMD made Vernal wait twenty-one months for its brand of justice to be issued.

21). Vernal meets the well-established policy implementations of the *First Report*

and Order and is entitled to a ruling that it is due a refund of its application fees associated with its dismissed Brookville, Pennsylvania application. Vernal is deserving of its refund request and has waited long enough for its money to be returned. Accordingly, for the reasons set forth herein, Vernal petitions this Commission to promptly modify the OMD's decision and grant the requested refund of its \$2335.00 application fee.

Submitted this 12th day of February, 2002,

Vernal Enterprises, Inc.

A handwritten signature in black ink, appearing to read "Larry L. Schrecongost", is written over a horizontal line. The signature is stylized with a large initial "L" and a long, sweeping underline.

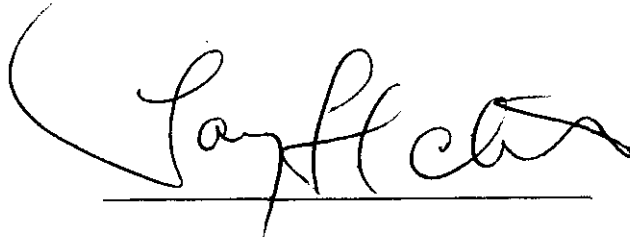
By,

Larry L. Schrecongost, President

Vernal Enterprises, Inc.

Declaration of Larry L. Schrecongost

I, Larry L. Schrecongost, President of Vernal Enterprises, Inc., do hereby declare under penalties of perjury that I have read the foregoing "Application for Review" and the information contained therein is true and accurate to the best of my knowledge, information and belief.

A handwritten signature in black ink, appearing to read 'Larry L. Schrecongost', is written over a horizontal line.

Larry L. Schrecongost

Date February 12, 2002

EXHIBIT DETAIL

Exhibit #1	3 pages	OMD's Letter of Denial dated January 14, 2002 to Vernal Enterprises, Inc.
Exhibit #2	8 pages	Vernal Enterprises, Inc. letter dated April 17, 2000 to OMD seeking refund of its filing fees in connection with its Dismissed application in the Brookville, PA proceeding
Exhibit #3	2 pages	Vernal Enterprises, Inc. refund request continuation letter to Marva Dyson, FCC dated October 28, 2001
Exhibit #4	5 pages	OMD's February 14, 2000 Public Notice issuing "FEE DECISIONS OF THE MANAGING DIRECTOR AVAILABLE TO THE PUBLIC" for Barnesboro, PA Brookville, PA and Wake Village, TX
Exhibit #5	2 pages	October 14, 1998 application of BK Radio for refund of its filing fees in connection with its Dismissed application in the Wake Village, TX FM proceeding
Exhibit #6	2 pages	October 14, 1998 application of Alan R. Quarnstrom for refund of his filing fees in connection with his Dismissed application in the Siren, WI FM proceeding
Exhibit #7	2 pages	October 19, 1998 application of Robert M. Stevens for refund of his filing fees in connection with his Dismissed application in the Brookville, PA FM proceeding
Exhibit #8	2 pages	October 19, 1998 application of Robert M. Stevens for refund of his filing fees in connection with his Dismissed application in the Barnesboro, PA FM proceeding
Exhibit #9	2 pages	November 17, 1998 application of BK Radio for refund of its application fees in connection with its Dismissed application in the Winona, TX FM proceeding
Exhibit #10	1 page	OMD September 16, 1999 Letter of Grant to BK Radio for return of its filing fees in connection with its Dismissed application in the Wake Village, TX FM proceeding

- Exhibit #11 1 page OMD February 9, 1999 Letter of Grant to Alan R. Quarnstrom for return of his filing fees in connection with his Dismissed application in the Siren, WI FM proceeding
- Exhibit #12 3 pages OMD's July 7, 1999 Public Notice issuing "FEE DECISIONS OF THE MANAGING DIRECTOR AVAILABLE TO THE PUBLIC" for Winona, TX and Siren, WI
- Exhibit #13 1 page OMD July 15, 1999 Letter of Grant to Robert M. Stevens for return of his filing fees in connection with his Dismissed application in the Brookville, PA FM proceeding
- Exhibit #14 1 page OMD July 21, 1999 Letter of Grant to Robert M. Stevens for return of his filing fees in connection with his Dismissed application in the Barnesboro, PA FM proceeding
- Exhibit #15 1 page OMD February 9, 1999 Letter of Grant to BK Radio for return of its filing fees in connection with its Dismissed application in the Winona, TX FM proceeding